

# InchBrook Audio Visual

## Policy Document

### Terms and Conditions of business engagement

<b>Abstract:</b>	This document provides a corporate policy statement on the terms and conditions of business engagement
<b>Document References:</b>	Administration
<b>Version:</b>	1.0
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<b>Author:</b>	Francois J. du Plessis

## **Document Management**

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**Change History**

Version Number	Issue Date	Author(s)	Reason for Issue
V1.0	10 June 2003	F.J. du Plessis	Initial version.

**Related Documents**

The following related documents should be read in conjunction with this document:

Document Title
Information & Communication Policy

**For Use By**

This policy document is for internal use by all InchBrook Audio Visual staff.

## 2. INTRODUCTION

This document is intended to set out InchBrook Audio Visual's corporate policy on the terms and conditions of engaging in business with its customers.

If you have any questions about this policy, please feel free to contact us through our website or write to us at InchBrook Audio Visual, P.O. Box 1416, Milnerton, 7435, Cape Town.

## 3. PURPOSE & OBJECTIVES

The principal objective of this policy is to ensure that InchBrook Audio Visual employees and customers understand their respective responsibilities and obligations in engaging in business transactions.

## 4. TERMS AND CONDITIONS

### Terms & Conditions

The terms and conditions of contract provided in this document shall apply as between InchBrook AV and Customer in all agreements for the sale or licensing of products or provision of services or in any quotation or proposal in relation to the sale or licensing of products or provision of services.

The following definitions shall apply to these terms and conditions:

- 4.1 "Customer" means the person (natural or legal) which purchases and/or is granted a licence to use products and/or receives services from InchBrook, or which receives a quotation or proposal from InchBrook in relation to the sale/licensing of products or provision of services;
- 4.2 "InchBrook" means InchBrook Audio Visual cc;
- 4.3 "equipment support fees" means fees charged by products manufacturers in consideration of the provision of warranty and support services;
- 4.4 "products" means all and any information technology products, as this term is generally used within the information technology industry;
- 4.5 "services" means any services or activities provided by InchBrook to customer.
- 5 These terms and conditions apply to all contracts for the sale of products, the licensing of software and services rendered, whether or not such sales are pursuant to orders by telephone or fax or e-mail or orders placed with InchBrook's agents or representatives on its behalf, and supersede any terms and conditions specified by the customer contained in any customer documentation. Any and all alterations or amendments to these terms and conditions, in order to be valid, must be in writing and signed by both parties.
- 6 All and any contracts for the sale or licensing of products and for the provision of services shall be constituted only upon acceptance in writing by an authorised representative of InchBrook of an order placed by Customer. Subject to changes and adjustments provided herein, InchBrook's prices and charges shall be determined from such contracts, constituted as aforesaid. Unless otherwise stated, all prices and charges are exclusive of VAT.
- 7 All quotations given by InchBrook shall be valid for 30 (thirty) days, unless otherwise specified in such quotation, and are based upon duties, levies, surcharges and taxes in effect as of the date of quotation.

- 8 Orders, after acceptance, may not be cancelled by Customer in whole or in part or varied by Customer in any manner whatsoever, unless agreed to by InchBrook in writing, whereupon customer shall be liable to pay to InchBrook a cancellation [or variation] fee amounting to 15% (fifteen percent) of the total order.
- 9 InchBrook reserves the right to deliver products ordered as and when the products are made available to InchBrook. Time is not of the essence for the delivery of the product. InchBrook shall be entitled to execute delivery in part from time to time. If prior to the delivery of products, those products become obsolete or are superseded by new products, InchBrook shall be entitled to cancel any contract for the sale/licensing of such products without liability or penalty to Customer.
- 10 InchBrook will endeavour to complete services by the dates quoted, but any such dates are estimates only and are not binding. Time is not of the essence for the provision or completion of services.  
Confidential to Customer & InchBrook Audio Visual personnel only.
- 11 Where prices or fees are based on a stated exchange rate (including without limitation annual fees due), these prices will be adjusted to take account of any exchange rate fluctuations. Adjustments due to exchange rate fluctuations will be calculated as at the date of invoice based on the exchange rate quoted by ABSA at the close of business on the date immediately prior to the date of invoice.
- 12 Products prices may be adjusted by InchBrook without prior notice to Customer as a result of any changes in manufacturer's/supplier's charges to InchBrook in respect of those products. Furthermore InchBrook shall be entitled to increase its products prices by the amount of any additional costs incurred by InchBrook as a result of delivery outside the borders of South Africa.
- 13 Unless otherwise agreed in writing between InchBrook and Customer, Customer shall make payment in full and free of exchange to InchBrook within 21 (twenty one) days of the date after InchBrook has invoiced customer. In respect of services, invoices will be rendered monthly in advance and in respect of product invoices shall be rendered on delivery. Equipment support fees will either be invoiced as a one-off fee or will be invoiced annually in advance.
- 14 Interest shall be charged and paid on all outstanding amounts at the rate of 2% (two percent) above the publicly quoted prime overdraft rate charged by ABSA from time to time. A certificate signed by a manager (whose designation or appointment it shall not be necessary to prove) of ABSA shall be prima facie proof of such rate. In the event of customer failing to effect payment of the invoiced amount 7 (seven) days from date of demand for such payment, InchBrook shall be entitled, at its option, and notwithstanding any indulgence or relaxation granted to Customer, to cancel the agreement of sale or licence or services and repossess the products, the software or the balance thereof. InchBrook shall be entitled to resell such product either by auction or by private treaty, and Customer shall be passed a credit for all amounts received in excess of the expenses of recovery and resale, and shall be liable for any shortfall. The exercise of InchBrook's rights under this clause shall be without prejudice to any of InchBrook's rights and remedies at law.
- 15 Any discount which InchBrook may have granted to Customer shall be forfeited by Customer if payment is not made to InchBrook on due date.
- 16 Payment may not be withheld pending the settlement of any claims or disputes and in the event of any amount due to InchBrook being handed to an attorney for collection, Customer shall pay the collection fee, tracing fees and all other legal charges thereby incurred by InchBrook on the Attorney and own client scale.
- 17 InchBrook shall not be liable under any circumstances for any loss or any damage, direct or indirect, consequential or otherwise, sustained by Customer as a result of non-delivery or non-performance of products or services or late delivery or late performance of the products or services or due to any other cause whatsoever.
- 18 Notwithstanding any thing to the contrary herein contained, ownership in and to the products sold shall only pass to Customer upon the full purchase price therefore having being paid. Ownership in any Software licensed to Customer shall remain with InchBrook or its licensors.
- 19 All risk in and to the products shall pass to Customer upon delivery thereof. Unless otherwise agreed in writing, delivery will occur when the products are handed over to a Customer representative at Customer's designated address specified in Customer's order.

- 20 InchBrook shall not be required to deliver any products or render any services to Customer for so long as Customer is in arrears with any payment owing to InchBrook from any cause. In the event of Customer committing an act of insolvency, or being placed under provisional or final judicial management, liquidation or sequestration (whether provisional or final), InchBrook reserves the right to cancel any sale contract or order and to stop further deliveries of product and performance of services. Confidential to Customer & InchBrook Audio Visual personnel only.
- 21 Customer shall not be entitled to return any products to InchBrook without InchBrook's express consent and provided Customer complies with the applicable provisions of clauses 20, 21 and 22 below. InchBrook shall be entitled (in its discretion) not to accept any products returned if they are not in original condition and complete with all manuals, accessories, cables, diskettes and packaging, provided that in the case of software, once the packaging has been opened and/or the seal has been broken, that software is non-returnable unless returned under clause 21.
- 22 No claim in respect of shortages or damage to products sold or licensed shall be entertained unless made in writing and received by InchBrook within 7 (seven) days from date of delivery of product. In the event of material defects or shortages in products proved to InchBrook's satisfaction, and upon being properly notified, InchBrook shall at its option:
- 23.1 either exchange products for similar products; or
- 23.2 take back such products and refund the purchase price and/or licence fees therefore.
- 24 Should products be defective or not conform to specifications such products may be returned within 30 (thirty) days of the date of invoice, provided that any products returned after 7 (seven) days but within 30 (thirty) days of date of invoice will be subject to a 15% (fifteen percent) handling fee. Any products returned more than 30 (thirty) days after date of invoice will not be accepted back under any circumstances. Any advance exchanges will be charged to Customer's account (and are therefore payable) and will only be credited (less handling fee if applicable) once defective products are received. InchBrook will cover only outward bound (and not inward bound) cost of products replaced under warranty.
- 25 All products being returned to InchBrook for whatever reason require a Return Material Authorisation (RMA) number and a copy of the invoice before they will be accepted. The RMA number must not be displayed on product being returned but must be quoted when products are returned. Where products are being swapped out, a new order number is to be supplied when a RMA number is obtained.
- 26 No further claims of whatsoever nature shall be entertained in respect of damaged or defective product, or products which do not conform to specifications and in particular InchBrook shall not be liable for any direct or consequential loss or damage of any nature.
- 27 All software delivered to Customer shall be licensed for use by the Customer strictly in accordance with the terms and conditions of the standard licence applicable to that software and acceptance of delivery by Customer or acceptance of any proposal or quotation shall constitute acceptance by Customer of such licence terms and conditions, even if a written licence is not signed by Customer. A copy of the standard licence terms and conditions for each software product is available from InchBrook upon request.
- 28 If any products are to be installed at or services are to be provided at Customer's premises, the following shall apply :
- 28.1 Customer shall ensure that InchBrook is given reasonable access to those premises during reasonable hours for that purpose;
- 28.2 Whilst InchBrook will take all reasonable precautions to prevent damage to Customer's premises, InchBrook shall not be responsible or liable therefore;
- 28.3 Customer shall ensure that the premises are suitably equipped and comply with all InchBrook's and/or manufacturer's specifications and requirements including (without limitation), size, power points, lighting and dust free environment. Confidential to Customer & InchBrook Audio Visual personnel only.
- 29 Customer shall at Customer's own expense obtain all necessary consents, permits, licences or other authorities from the owner of the premises, Telkom, governmental, municipal, local or other competent authorities and others whose permission is or may be necessary for the installation or use of products. InchBrook does not warrant or represent that any such consents, permits, licenses or other authorities will be granted and a failure to obtain any one or other of the same shall not invalidate any order accepted by InchBrook.

- 30 Where the manufacturer / licensor (“manufacturer”) of products sold or licensed to Customer gives warranties to InchBrook, InchBrook will give to Customer the same warranties, with equivalent disclaimers and limitations of liability, in respect of those products. Save as aforesaid, InchBrook gives no warranties or undertakings to Customer whatsoever with regard to products or services, and all implied or residual warranties, including without limitation, the warranties of ‘fitness for a particular purpose’ and ‘merchantability’ are hereby disclaimed and excluded.
- 31 InchBrook shall be entitled to employ sub-contractors to provide products and/or all or any portion of the services.
- 32 Nothing in these terms and conditions shall prevent InchBrook using for any purpose, any know-how or experience including programming tools, skills and techniques gained or arising from the provision of the services.
- 31 Unless agreed by the parties to the contrary, copyright and all other intellectual property rights whatsoever in all quotations, proposals and documents furnished by InchBrook in or in relation to the sale/licensing of products or provision of services and any materials developed in providing services, including without limitation all computer programs (collectively "InchBrook IP") are and shall remain at all times vested in InchBrook, or its Licensors. Customer shall do all such acts and things as may be reasonably required for the purpose of preserving or perfecting such vesting and shall use InchBrook IP only strictly in accordance with Customer's contractual rights and entitlements. Customer shall not use InchBrook IP for any other purpose nor shall it disclose InchBrook IP to any third party. In the event of the termination or cancellation of the contractual relationship between InchBrook and Customer, or in the event that Customer does not accept any InchBrook quotation or proposal, Customer shall return all InchBrook IP to InchBrook.
- 32 Either party may, at its sole discretion, suspend or terminate the services forthwith on written notice should the other party commit a breach (save for a breach referred to in clause 12) of any obligation in relation to such services and omit or fail to remedy such breach to the reasonable satisfaction of the determining party within 30 (thirty) days of receipt of notice in writing by the determining party requiring it to do so. Exercise of rights under this clause shall be without prejudice to either parties' rights and remedies at law.
- 33 No waiver or abandonment by either party of any of its rights in terms of these terms and conditions, shall be binding on that party, unless such waiver of abandonment is in writing and signed by the waiving party.
- 34 If any provision of these terms and conditions is found by any court of competent jurisdiction to be invalid, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of these terms and conditions.
- 35 Customer chooses as its nominated address for the purposes of receiving of notices or other communications from InchBrook or for the purpose of service of legal process from InchBrook, the physical address and fax number specified in Customer's order. Customer shall be entitled to change its nominated address to another physical address and/or fax number in South Africa by way of written notice to InchBrook.
- 36 Any notice to Customer or InchBrook must in order to be valid and effective, be in writing and either be hand delivered to the recipient's physical address or transmitted by fax. Any notice sent by electronic communication other than fax shall not be valid or effective. Confidential to Customer & InchBrook Audio Visual personnel only.
- 37 These terms and conditions shall be governed and construed in accordance with the laws of the Republic of South Africa.
- 38 Nothing in these terms and conditions constitutes either party as the agent, principal, representative or partner of the other, and no party shall be entitled to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like.

## 11. Employee Sign Off Form

This form should be returned to Leanne Bronkhorst.

**Document Name** : Terms and conditions of business engagement

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I confirm that I have received, read and understood the policy document described above and that it forms part of my terms and conditions of employment with InchBrook Audio Visual:

**Signed** : .....

**Print Name** : .....

**Date** : .....